7 Things to know about employment and marijuana use in Colorado

1. **What is Amendment 64?**

   In 2012, Colorado adopted an amendment to its Constitution (Amendment 64) making it legal for individuals 21 and older to legally use or possess up to 1 ounce of marijuana.

2. **What is the effect of Amendment 64 on federal law?**

   Amendment 64 has no effect on federal law. Marijuana is illegal under the federal Controlled Substances Act, which provides no exceptions for medicinal use or legal state use. In addition, the Americans with Disabilities Act (ADA) “does not require employers to accommodate medical marijuana use as a reasonable accommodation because an individual with a disability is not entitled to accommodation for the use of drugs considered unlawful under the Controlled Substances Act.” (SHRM article, 4/25/2016) Employers can choose to abide by federal law and prohibit its use.

3. **Can an employee be high on the job?**

   Amendment 64 does not require employers to permit the use of marijuana in the workplace. It also does not restrict employers from having policies against employee drug use. Thus, employers may still prohibit and regulate the possession, consumption, use, distribution, sale, transportation or growing of marijuana. Many employers in Colorado continue to look to federal law as their guide.

4. **Why do employers care about off-site consumption of marijuana?**

   Employers are concerned about workplace safety, absenteeism and productivity.

5. **Can employers conduct random drug tests for drug use, including marijuana?**

   Yes. Employers can conduct drug tests beginning before hire and extending throughout one’s employment. In 2013, the percentage of positive drug tests among American Workers increased for the first time in more than a decade. “In general, standard urine tests can detect traces (metabolites) of THC several days after use. In heavy users, THC metabolites can sometimes be detected for weeks after use stops.” (National Institute of Health) Some may test hair samples (to detect longer term use, up to 90 days) and oral fluids (to detect recent use).
6. Can an employee be fired for using marijuana during non-work time?

Yes. Employers in Colorado can lawfully fire workers who test positive for marijuana, even if it was consumed during non-work time. Drug tests cannot tell when marijuana was used. Colorado law does not protect employees for either recreational or medicinal use. A 2014 survey conducted by Mountain States Employers Council (MSEC) found that 77% of companies surveyed “currently test employees for drugs either pre-employment or at any other time during the employment”, including randomly.

7. How will I know my employer’s stance on using marijuana during non-work time?

Review your employer’s employee policies and manual.

Bibliography


